IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.333 OF 2006
WITH
WRIT PETITION NO.335 OF 2006

Bajaranglal N. Agarwal & Ors. .. Petitioners
Versus
Khemchand R. Ramchandani & Ors. .. Respondents

Mr.N.V.Gangal for petitioners
Mr.Kari Shroff i/b. Akshar Law for respondent Nos. 2 to 4
Mr.Khemchand Ramchandani respondent No.1 in person.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 22nd February 2006.
P.C.

. These petitions are directed against orders passed by the City Civil Court in Notices of Motion which have been taken out by petitioners in a suit which was filed in the City Civil Court but subsequently the plaint was directed to be returned to parties for presentation to proper court.

2. Grievance in the motions is that taking advantage of an interim order in the suit, petitioners have been dispossessed by the plaintiffs to the said suit and that the court having held that it has no jurisdiction and directing that the plaint be returned for presentation to proper court, the interim order passed in the said suit be set aside and possession be restored of the premises in question to the petitioners herein. The Court below proceeds on the basis that the application is for restitution and invoking jurisdiction of the Court under section 144 of C.P.C. However, the court below has held that the motion is not maintainable as the plaint is returned for presentation to proper court and, therefore, the City Civil Court is rendered functus officio.

3. Mr.Gangal appearing for petitioner invites my attention to section 144 of C.P.C.

which reads thus:-

> "144:-(1) Where and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as well, so far as may be, place the parties in the position which they would have occupied but for suchdecree or order or such part thereof as has been varied, reversed, set aside or modified and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are

properly consequential on such variation, reversal, setting aside or modification of the decree or order."

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1)."

4. Upon a plain reading of this provision, it is apparent that by explanation "the expression Court which passes decree or order is by a deeming fiction meant to include even the court of first instance which has ceased to exist or has ceased to have jurisdiction to execute the decree or order but the Court in which the suit at the threshold was instituted shall have jurisdiction to entertain and try the application under section 144. In other words, in the present case, the order passed in the notice of motion in the suit being set aside, according to

petitioners, afer the plaint being directed to be returned by the City Civil Court, it is the City Civil Court which will have the power to decide the application for restitution as it was siezed of the matter and passed an order on notice of motion of original plaintiff. Therefore, the City Civil Court alone could consider the application for restitution and the said application cannot be decided by a Court in which the plaint would be presented.

5. In my view, the submission of Mr.Gangal has considerable merit and the motion could not have been dismissed as being not maintainable. In the result, petitions are allowed. Orders under challenge are set aside. Notices of motions for restitution are restored to the file of City Civil Court for being heard on merits and in accordance with law. Needless to state that the first respondent can urge before the City Civil Court that no relief be granted in favour

of petitioners herein and no case is made out for invoking Court's power under section 144 of CPC by them. Petitions allowed.

(S.C.DHARMADHIKARI, J)